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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 412, 413, and 489

CMS-1655-CN3

RINs 0938-AS77; 0938-AS88; 0938-AS41

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2017 Rates; Quality Reporting Requirements for Specific Providers; Graduate Medical Education; Hospital Notification Procedures Applicable to Beneficiaries Receiving Observation Services; Technical Changes Relating to Costs to Organizations and Medicare Cost Reports; Finalization of Interim Final Rules With Comment Period on LTCH PPS Payments for Severe Wounds, Modifications of Limitations on Redesignation by the Medicare Geographic Classification Review Board, and Extensions of Payments to MDHs and Low-Volume Hospitals; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error in the final rule that appeared in the August 22, 2016 **Federal Register** as well as additional typographical errors in a related correction to that rule that appeared in the October 5, 2016 **Federal Register**. The final rule was titled "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2017 Rates; Quality Reporting Requirements for Specific Providers; Graduate Medical Education; Hospital Notification Procedures Applicable to Beneficiaries Receiving Observation Services;

Technical Changes Relating to Costs to Organizations and Medicare Cost Reports; Finalization of Interim Final Rules With Comment Period on LTCH PPS Payments for Severe Wounds, Modifications of Limitations on Redesignation by the Medicare Geographic Classification Review Board, and Extensions of Payments to MDHs and Low-Volume Hospitals".

DATES: Effective Date: This correcting document is effective on October 28, 2016.

Applicability Date: This correcting document is applicable for discharges beginning October 1, 2016.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

In the final rule which appeared in the August 22, 2016 **Federal Register** (81 FR 56761) entitled "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2017 Rates; Quality Reporting Requirements for Specific Providers; Graduate Medical Education; Hospital Notification Procedures Applicable to Beneficiaries Receiving Observation Services; Technical Changes Relating to Costs to Organizations and Medicare Cost Reports; Finalization of Interim Final Rules with Comment Period on LTCH PPS Payments for Severe Wounds, Modifications of Limitations on Redesignation by the Medicare Geographic Classification Review Board, and Extensions of Payments to MDHs and Low Volume Hospitals" (hereinafter referred to as the FY 2017 IPPS/LTCH PPS final rule), there were a number of technical and typographical errors. To correct the typographical and technical errors in the FY 2017 IPPS/LTCH PPS final rule, we published a correcting document that appeared in the

October 5, 2016 **Federal Register** (81 FR 68947) (hereinafter referred to as the FY 2017 IPPS/LTCH PPS correcting document).

II. Summary of Errors

A. Summary of Errors in the FY 2017 IPPS/LTCH PPS Final Rule.

On page 57105, we inadvertently made a typographical error in defining an MSA-dominant hospital.

B. Summary of Errors in the FY 2017 IPPS/LTCH PPS Correcting Document.

On page 68953 in the table titled "CHANGE OF FY 2016 STANDARDIZED AMOUNTS TO THE FY 2017 STANDARDIZED AMOUNTS," we inadvertently made a typographical error in the Labor figure for the "National Standardized Amount for FY 2017 if Wage Index is Greater than 1.0000; Labor/Non-Labor Share Percentage (69.6/30.4)" under the classification of "Hospital did NOT submit quality data and is a meaningful EHR user".

On page 68955 in the table titled "Table 1A—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR (69.6 PERCENT LABOR SHARE/30.4 PERCENT NONLABOR SHARE IF WAGE INDEX IS GREATER THAN 1)—FY 2017," we inadvertently made a typographical error in the Nonlabor figure under the classification of "Hospital submitted quality data and is a meaningful EHR user (update = 1.65 percent)".

On page 68958 in the table titled "FY 2017 IPPS ESTIMATED PAYMENTS DUE TO RURAL AND IMPUTED FLOOR WITH NATIONAL BUDGET NEUTRALITY," we made errors in the alignment of the data in the fourth column titled "Difference (in \$ millions)". Specifically, when creating the table in the correcting document, the data in the fourth column was inadvertently misaligned starting with the entry for Washington, D.C. and continuing to the end, resulting in incorrect values in that

column.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. This 30--day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

We believe that this correcting document does not constitute a rule that would be subject to the APA notice and comment or delayed effective date requirements. This correcting document corrects typographical errors in the FY 2017 IPPS/LTCH PPS final rule and the FY 2017 IPPS/LTCH PPS correcting document but does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the information in the FY 2017 IPPS/LTCH PPS final rule accurately reflects the policies adopted in that final rule.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate

the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the FY 2017 IPPS/LTCH PPS final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not altering our payment methodologies or policies, but rather, we are simply implementing correctly the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the FY 2017 IPPS/LTCH PPS final rule accurately reflects these payment methodologies and policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

A. Correction of Errors in the Final Rule.

In FR Doc. 2016--18476 of August 22, 2016 (81 FR 56761), we are making the following correction:

1. On page 57105, first column, first partial paragraph, lines 6 and 7, the phrase "total hospital's Medicare discharges" is corrected to read "total hospital Medicare discharges".

B. Correction of Errors in the Correcting Document.

In FR Doc. 2016--24042 of October 5, 2016 (81 FR 68947), we are making the following corrections:

1. On pages 68952 through 68954 in the table titled, "CHANGE OF FY 2016 STANDARDIZED AMOUNTS TO THE FY 2017 STANDARDIZED AMOUNTS", the last entry on page 68953 is corrected to read as follows:

	Hospital Submitted Quality Data and is a Meaningful EHR User	Hospital Submitted Quality Data and is NOT a Meaningful EHR User	Hospital Did NOT Submit Quality Data and is a Meaningful EHR User	Hospital Did NOT Submit Quality Data and is NOT a Meaningful EHR User
National Standardized Amount for FY 2017 if Wage Index is Greater Than 1.0000; Labor/Non-Labor Share Percentage (69.6/30.4)	Labor: \$3,839.23 Nonlabor: \$1,676.91	Labor: \$3,762.75 Nonlabor: \$1,643.50	Labor: \$3,813.74 Nonlabor: \$1,665.77	Labor: \$3,737.25 Nonlabor: \$1,632.37

2. On page 68955, top of the page in the table titled, "Table 1A—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR (69.6 PERCENT LABOR SHARE/30.4 PERCENT NONLABOR SHARE IF WAGE INDEX IS GREATER THAN 1)—FY 2017", the first column of the table is corrected to read as follows:

Hospital Submitted Quality Data and is a Meaningful EHR User (Update = 1.65 Percent)	
Labor	Nonlabor
\$3,839.23	\$1,676.91

3. On page 68958, top of the page, the table titled, "FY 2017 IPPS ESTIMATED PAYMENTS DUE TO RURAL AND IMPUTED FLOOR WITH NATIONAL BUDGET NEUTRALITY" is corrected to read as follows:

FY 2017 IPPS ESTIMATED PAYMENTS DUE TO RURAL AND IMPUTED FLOOR WITH NATIONAL BUDGET NEUTRALITY

State	Number of Hospitals (1)	Number of Hospitals That Will Receive the Rural Floor or Imputed Floor (2)	Percent Change in Payments due to Application of Rural Floor and Imputed Floor with Budget Neutrality (3)	Difference (in \$ millions) (4)
Alabama	83	6	-0.3	-6
Alaska	6	4	2.1	4

State	Number of Hospitals (1)	Number of Hospitals That Will Receive the Rural Floor or Imputed Floor (2)	Percent Change in Payments due to Application of Rural Floor and Imputed Floor with Budget Neutrality (3)	Difference (in \$ millions) (4)
Arizona	57	46	3.5	63
Arkansas	44	0	-0.4	-4
California	301	186	1.3	131
Colorado	48	3	0.2	3
Connecticut	31	8	0.2	4
Delaware	6	2	0	0
Washington, D.C.	7	0	-0.4	-2
Florida	171	16	-0.3	-18
Georgia	105	0	-0.4	-10
Hawaii	12	0	-0.3	-1
Idaho	14	0	-0.3	-1
Illinois	126	3	-0.4	-19
Indiana	89	0	-0.4	-11
Iowa	35	0	-0.4	-4
Kansas	53	0	-0.3	-3
Kentucky	65	0	-0.4	-6
Louisiana	95	2	-0.4	-5
Maine	18	0	-0.4	-2
Massachusetts	58	15	0.6	22
Michigan	95	0	-0.4	-18
Minnesota	49	0	-0.3	-6
Mississippi	62	0	-0.4	-4
Missouri	74	2	-0.3	-8
Montana	12	4	0.3	1
Nebraska	26	0	-0.3	-2
Nevada	24	3	-0.2	-2
New Hampshire	13	9	2.2	11
New Jersey	64	18	0.2	6
New Mexico	25	0	-0.3	-1
New York	154	21	-0.3	-20
North Carolina	84	1	-0.4	-12
North Dakota	6	1	-0.3	-1
Ohio	130	10	-0.4	-13
Oklahoma	86	2	-0.3	-4
Oregon	34	2	-0.4	-4
Pennsylvania	151	5	-0.4	-20
Puerto Rico	51	12	0.1	0

State	Number of Hospitals (1)	Number of Hospitals That Will Receive the Rural Floor or Imputed Floor (2)	Percent Change in Payments due to Application of Rural Floor and Imputed Floor with Budget Neutrality (3)	Difference (in \$ millions) (4)
Rhode Island	11	10	4.7	18
South Carolina	57	5	-0.1	-2
South Dakota	18	0	-0.2	-1
Tennessee	92	20	-0.3	-7
Texas	320	3	-0.4	-26
Utah	33	1	-0.3	-2
Vermont	6	0	-0.2	-1
Virginia	76	1	-0.3	-8
Washington	49	6	-0.1	-1
West Virginia	29	3	-0.2	-1
Wisconsin	65	6	-0.3	-5
Wyoming	10	0	-0.1	0

CMS-1655-CN3

Dated: October 26, 2016

Madhura Valverde,

Executive Secretary to the Department,

Department of Health and Human Services.

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